IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.312 OF 2006
IN
EXECUTION APPLICATION NO.401 OF 2003
IN
CASE NO.CC-II/120 OF 1999

Ashok J. Ruparelia Applicant

versus

The Bharat Nagar Co-op. Hsg. Society Ltd. Respondent

Mr.M.S.Khadilkar with Mr.R.V.Govilkar for applicant.
Mr.Tushar Dahibawkar for respondent.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 25th April 2006

PC :

1. The present Chamber Summons is taken out by the applicant seeking leave of this Court to give Flat No.E-1, 204, more particularly described in prayer clause (a) of the plaint on leave and licence basis.

2. The co-operative society who is respondent to this Chamber Summons, has filed present Execution Application in which warrant of attachment was issued on 4th November 2004 and immovable

property (flat in question) was attached. The applicant took out Chamber Summons No.337 of 2005 for raising attachment and this Court passed the following order on 2nd February 2006 thereon :-

"CORAM : S.J.VAZIFDAR, J.
DATED : 2ND FEBRUARY, 2006.

P.C. :-

1. The Chamber Summons is disposed of with the following order :-

i) The Applicant, who is present in Court, agrees and undertakes through his counsel to pay a sum of Rs.50,000/- on or before 1.3.2006, a sum of Rs.70,000/- on or before 3.4.2006 an a sum of Rs.50,000/- each on or before third day of May, June, July and August, 2006 aggregating to a sum of Rs.3,20,000/-

ii) The Applicant further undertakes not to make any application for extension.

iii) In the event of any default being committed by the Applicant, the Chamber Summons shall stand dismissed without further reference to the Court.

iv) The Applicant further undertakes to pay the outgoings which arise in future promptly.

v) Needless to add that this order is without prejudice to the rights of the Society to recover the other dues from the Applicant.

vi) The aforesaid payments shall be made by cheque and/or demand draft directly to the Respondent-Society.

2. Liberty to the Applicant to apply to give out the flat on leave and license basis after obtaining the leave of the Court.

> 3. The attachment shall continue till the entire amount of Rs.3,20,000/- is paid as aforesaid. Further proceedings in execution however are stayed till the Applicant continues to pay and pays the said amounts as aforesaid.
>
> 4. Both the learned counsel have requested me not to give reasons for this order."

3. According to this order the applicant before me agreed and undertook to the Court through his counsel to pay a sum of Rs.50,000/- on or before 1st March 2006, a sum of Rs.70,000/- on or before 3rd April 2006 and a sum of Rs.50,000/- each on or before 3rd May 2006, 3rd June 2006, 3rd July 2006 and 3rd August 2006. Thus, the decretal amount of Rs.3.20 lakh was to be cleared in this manner. The applicant had undertaken to pay outgoings of the society as well.

4. Pursuant to this order, in paragraph no.3 of the affidavit in support of this Chamber Summons, it is pointed out that the first instalment of Rs.50,000/- has been paid. On the last occasion I was informed that a further sum of Rs.70,000/- which is to be paid on 3rd April 2006, has also been paid.

5. The liberty granted in the above order is now

sought to be utilised and the submission of Shri Govilkar appearing for the applicant, is that the applicant may be allowed to give the flat on leave and licence basis and from the income/licence fee accruing there from, the balance amount would be paid. He submits that the applicant as also the licencee, is willing t give all undertakings and make a statement that until the entire amount is cleared, physical possession of the property shall not be handed over to any third party, save and except the proposed licencee, nor any rights created in respect thereof in any manner whatsoever.

6. An affidavit in reply has been filed by the respondent through it's Secretary and it is pointed out that not only a sum of Rs.3.20 lakh is due and payable, but despite an undertaking given to this Court, the monthly charges and outgoings are not being paid in respect of this flat by the applicant. In paragraph no.9 of the affidavit of the Secretary, this is what is stated :-

> "9. The Applicant is habitual defaulter and it is pertinent to note that apart from the above arrears of the maintenance and outgoings the applicant is failed and

> neglected to pay monthly maintenance and outgoings in respect of his flat from the period April 1999 till today. Hereto annexed and marked Exhibit-1 is the copy of the statement of maintenance and outgoing due by in respect of the applicant flats for the period March 1999 to March 2006. As per the said statement the Applicant is liable to pay sum of Rs.2,07,165/- on account of outgoing and maintenance for the period of March 1999 to March 2006 apart from the above maintenance and outgoings."

7. On the last occasion I directed the applicant's advocate to obtain instructions from the applicant with regard to clearance of these outgoings, so also keep proposed licencee present in person and only thereafter appropriate directions can be passed on this Chamber Summons. Accordingly, Shri Govilkar makes a statement that save and except a sum of Rs.50,000/- which is being disputed by the applicant, the arrears in respect of outgoings and monthly charges would be cleared and paid off @ 18% p.a. instead of 21% p.a. as claimed by the society, within a period of four weeks from the date of receipt of revised statement. The learned advocate appearing for the society has no objection to the interest rate being reduced and he states that the revised statement would be furnished within a period of ten days from today.

8. I am aware of the fact that the instalments which are falling due in the month of May, June, July and August of 2006, will have to be cleared off. However, in the light of the undertakings and in the larger interest of justice, so also to facilitate the applicant to clear off the dues, the leave as sought for by him can be granted on the following conditions :-

I) Shri Jayantilal N. Thakkakr will be inducted by the applicant purely on leave and licence basis without any right of any nature whatsoever being created in his favour in respect of immovable property/flat in question, on such terms and conditions with regard to payment of licence fee as parties may arrive at between them;

II) However, the licencee shall not be put in physical possession of the flat in question until the arrears of the society charges as computed by it and communicated to the applicant, are not paid within the time stipulated above;

III) If default is committed by the

applicant in paying the society charges as agreed and undertaken so also in payment of the instalment falling due on 3rd May 2006 or any subsequent instalment, the Court Receiver, High Court, Bombay shall stand appointed as Receiver in execution with all powers under Rule XL, Rule 1 of CPC including taking physical possession of the flat from whosoever is in possession and occupation thereof;

IV) After taking physical possession, the Court Receiver shall seek appropriate directions and needless to state that while doing so, he will give notice to all parties including the respondent society;

V) These conditions are in addition to those imposed by this Court in its order dated 2nd February 2006. However, save and except the liberty to execute leave and licence agreement, the order of attachment to also continue till the amount as stipulated in the decree is paid.

9. Chamber Summons stands disposed of in the above terms. Liberty to apply.

(S.C.DHARMADHIKARI, J.)